The Political Theology of the Secular State in Hobbes and Böckenförde

1. Böckenförde on the Ideological Basis of Secularization

The secularization of political community is a precarious achievement. It requires at least two different but complementary forms of argumentative grounding. To start with, there can be no secular political order unless there is a secular theory of the purpose or end of political society, one that allows us to understand (the right kind of) political society as legitimate without reference to religious ideas and that permits us to reason about constitutional structure in non-religious terms. Ernst-Wolfgang Böckenförde’s seminal account of secularization rightly credits the early modern theorists of the state – the French ‘politiques’, Jean Bodin, and most importantly Thomas Hobbes – with having developed the first: thoroughly secular conception of the purpose and legitimacy of the state, in response to the devastating violence of religious civil war.¹

The broad outlines of Böckenförde’s account of the origins of the modern, secular state in the religious civil wars of early modernity overlap to a large extent with the standard liberal narrative of the process of secularization.² They can be summed up as follows: Once it had become clear that the religious unity of Christian Europe was irretrievably lost and that religious civil war might continue indefinitely, the early modern state gradually shed its role as the temporal arm of a higher, spiritual power and eventually came to be understood as an ideologically neutral mechanism for the provision of earthly security. Hobbes’s political

limited, at first, to a mere freedom of inner conscience and did not include a right to the free exercise of religion. The seeds of the liberal state had nevertheless been planted.

The thesis I would like to put forward here is that this account of the ideological basis of the historical process of political secularization, in its focus on secular political motives, is in an important respect incomplete. That a justification of the state can bracket the question of substantive justice and of religious truth, because it appeals exclusively to a secular interest in biological survival and material contentment, does not by itself ensure that the state’s claims to obedience will prevail over those of religion. A religious believer may recognize, as readily as anyone else, that the state is a useful institution and that it serves important secular purposes; purposes that, under ordinary circumstances, justify the state’s claim to obedience. Nevertheless, the religious believer may still hold that the duty to obey the state’s law must be conditional on the compatibility of legal and religious obligation. After all, if obedience to the demands of the state would force me to neglect what I take to be my religious duty or to violate a prohibition of divine law, I may stand to lose salvation, even while I gain security in this world.

Hobbes was well aware of the problem that arises if we are called upon to obey ‘at once, both God, and Man, then when their Commandements are one contrary to the other.’ He took this conflict to be ‘the most frequent praetext of Sedition, and Civill Warre.’ What made the problem so thorny, in Hobbes’s view, was the fact that ‘it is manifest enough, that when a man receiveth two contrary Commands, and knows that one of them is Gods, he ought to obey that, and not the other, though it be the command even of his lawfull

---

This is the project Hobbes pursued in the oft-neglected third and fourth parts of Leo\textipa{\textit{viathan}}, as Böckenförde himself points out.\(^7\) According to Hobbes, there are compelling theological reasons to hold that any religion that could come to question the supremacy of the law of the secular state must be a false religion, while the claims of true religion – or more precisely: of any religion that is a candidate for truth – will consistently support the authority of the secular state. Hence, we can rest assured that tragic conflicts between our duty to obey God and our duty to obey the law cannot occur. Supposed religious duties that might compel us to disobey the law must be specious from a theological point of view.

Though I will not support Hobbes’s specific account of true religion in all particulars, I will claim that a political-theological argument of this general form must form part of the ideological basis of secularization, at least as long as a significant proportion of the citizens of the secular state remain religious believers. Religion(s) must themselves accept a certain kind of political theology for the secular state to be stable in the face of continuing attachment to religious belief. I take this claim to be a modest addition to Böckenförde’s analysis of secularization.\(^8\) Like Hobbes, Böckenförde is concerned to emphasize that acceptance of a secular state is required from the point of view of the best understanding of Christianity.\(^9\) What seems to me to be missing from Böckenförde’s otherwise very illuminating and compelling discussion of the process of secularization is a sufficiently explicit appreciation of the fact that the recognition of this view, on the part of religious believers, was itself one of the ideological preconditions of the process of secularization.

\(^7\) See Böckenförde (n 1) 59.

\(^8\) Böckenförde himself suggests this line of inquiry in Ernst-Wolfgang Böckenförde, ‘Der sakularisierte Staat. Sein Charakter, seine Rechtfertigung und seine Probleme im 21. Jahrhundert’ in Böckenförde, Der sakularisierte Staat (n 1) 11-41, 37-41.

\(^9\) See Böckenförde (n 5) 46-54.
lesser. It follows from these assumptions that (4) one ought to obey God more than man.

Whenever the laws of the state conflict with the laws of God, it is rational to pay obedience to
God and to disregard the command of the sovereign. 13

This line of reasoning appears to undercut Hobbes’s well-known argument for
absolute sovereignty, according to which we owe unconditional (or almost unconditional)
obedience to the laws of a legitimate sovereign. Without recognition of absolute sovereignty
there can be no end, according to Hobbes, to the state of nature, but such recognition, it
would seem, would require us to reject the view that our duty of obedience to God trumps the
duty to obey the state’s law. Appearances, though, are somewhat misleading in this case. Let
us grant that it is true that a rational agent ought to obey God more than man. To arrive at the
further conclusion that it must sometimes be justified to disobey the state’s law we need to
assume as well that it is possible for a sovereign’s law to conflict with the law of God. This, I
will argue, is precisely what Hobbes is concerned to deny. If it can be established that a
sovereign’s laws could never conflict with the laws of God, the principle that we ought to
obey God more than man will be rendered politically harmless. It will fail to entail that our
religious duties can come to be in conflict with our recognition of absolute sovereignty.

To be sure, many interpreters of the political theology presented in Leviathan
subscribe to a different account of Hobbes’s argumentative strategy. Though Hobbes
discusses religious issues at great length, he is often assumed to have been a closeted atheist
and it is claimed that a sufficiently careful reading of the text of Leviathan will reveal clear
signs of his atheism.14 Under this interpretation, Hobbes’s talk about God is only an

13 See ibid 260, 306-7 and 403-5.

ed Heinrich Meier and Wiebke Meier (2nd edition, J.B. Metzler 2008) 263-369; Edwin Curley, ‘‘I Dare Not
Write So Boldly’ or How to Read Hobbes’ Theological-Political Treatise’, in Daniela Bostrenghi (ed), Hobbes e
even if s/he does not believe in the religious doctrine that undergirds it. An atheist will not
fear that insincere observance of external religious rites is offending the true God, since s/he
holds that there is none. At the same time, the atheist may well think that a state-controlled
public religion, even if fabricated, is useful as a pillar of social stability, on the condition that
it is apt to dispose the uneducated masses of religious believers to legal obedience.

Hobbes's analysis of the origins of religion in chapter 12 of *Leviathan*\(^\text{16}\) may seem to
provide support for the claim that we should to Hobbes a mere tactical use of religious
argument. The analysis emphasizes that religion arises from our fear of humanly
uncontrollable events that may harm us. This fear gives rise to superstition, defined as a
belief in the existence of invisible powers that may be influenced to protect us, or to desist
from harming us, by the performance of certain rites of worship. This 'natural seed of
religion,'\(^\text{17}\) Hobbes claims, was cultivated by founders of pagan religious traditions who
claimed to be in contact with higher powers. Hobbes argues that these founders were really
just statesmen who invented religion to make us 'the more apt to obedience, laws, peace,
charity, and civil society.'\(^\text{18}\) If such is the origin of religion, it would appear that the
justification for the propagation of religious beliefs, from the philosopher's point of view, is
to be seen in their social function and not in their truth.

I do not think that Hobbes's musings about the natural origins of religion provide
sufficient support to the view that he was endorsing a Straussian approach. First, Hobbes's
observations are quite obviously not intended to apply to the Christian faith. Hobbes
explicitly rejects the idea that Jesus Christ ought to be interpreted as a statesman who tried to
bolster his own power, or the power of the community he founded, by making us more apt to

\(^{16}\) See Hobbes (n 6) 75-86.

\(^{17}\) Ibid 79.

\(^{18}\) Ibid 79.
Second, a Straussian political-theological approach is itself liable to give rise to a problem of political stability. Any attempt to portray the ruler to the masses as a representative of the divine will have to rest on the belief that one’s duty to obey the sovereign is entailed by a prior duty to obey divine law. Such a belief may of course enhance a sovereign’s de facto authority. But it will do so only as long as people remain convinced that the sovereign’s law accords with the law purportedly issued by God. This conviction, as Hobbes was well aware, is easy to unsettle, by religious enthusiasts, false prophets, or power-hungry challengers for political authority. Those who obey their rulers because they hold them to be executors of the divine will, if things appear to go wrong, be prone to jump to the conclusion that the sovereign must have violated divine law and therefore is to be resisted, especially if they are encouraged to do so by a clergy that claims to be the final interpreter of divine law. Thus, any manipulative use of religion to bolster political authority invariably leaves the state vulnerable to the rabble-rousing of self-appointed interpreters of divine will.  

Hobbes did not rely on a manipulative use of religion in order to arrive at a solution to the problem of dual obedience. Rather, he made an attempt to take religious believers seriously, by offering an argument that does not presuppose the truth of atheism. Hobbes’s real political-theological argument, I will call it the ‘epistemic argument’, concedes, for the purpose of argument, that God exists, that obedience to his laws is necessary for salvation, and that it would therefore be irrational to risk eternal life only to please the earthly sovereign. The most fundamental assumption of the epistemic argument is that we can never be in a position to know that some purported divine law that conflicts with a sovereign’s commands is authentic. In Hobbes’s words, ‘the difficulty […] consisteth in this, that men when they are commanded in the name of God, know not in divers Cases, whether the command be from

---

22 Hobbes's concern with this danger is manifest in his criticism of Catholicism and its claim to indirect temporal power. See Hobbes (n 6) 455-7 and 480-2.
God made known to all human beings by endowing them all with natural reason. Divine positive law, by contrast, consists of rules of conduct that are not accessible to natural reason but that God specially revealed to some. For Hobbes, the problem of dual obedience arises only with respect to positive divine laws. In the context of the discussion of dual obedience in parts III and IV of *Leviathan*, Hobbes assumes that he has already shown, in the second part of *Leviathan*, that the law of nature requires (almost) unconditional obedience to the sovereign. The problem of dual obedience, therefore, must concern purported divine positive laws (i.e. rules of worship or ceremonial laws) that are not already included in the state’s positive laws or the laws of nature and that are accessible only through revelation. The question, therefore, boils down to whether one could ever come to know through revelation that there is a divine law that conflicts with the laws of the sovereign.

Hobbes addresses this question through a critique of the epistemic reliability of purported divine revelation that I can present only in very rough outline. According to Hobbes, revelation can be either direct or indirect. I receive direct revelation if God, in some way, reveals himself to me personally. I receive indirect revelation if someone else tells me that he has received revelation from God and informs me about its content (=prophecy) or if I

---

27 That Hobbes acknowledges the distinction is evident in his juxtaposition of the ‘naturall Kingdom of God’ and the ‘prophetique Kingdom of God’, as well as in his description of the latter as a kingdom ‘wherein having chosen out one pecuiliar Nation (the Jewes) for his Subjects, he governed them, and none but them, not onely by naturall Reason, but by Positive Lawes, which he gave them by the mouthes of Prophets.’ (Hobbes (n 6) 246-7. For another use of the distinction see ibid 267-8.)


29 For a fuller discussion see Lupoli (n 10) 557-61.
by a prophet, Hobbes claims, we cannot be accused of disrespecting God’s laws. Rather, we only doubt the veracity of the prophet’s claims. And God, if he did expect us to obey some law, would surely have taken care to publish that law in a way that is open to clear and unambiguous authentication.

Similar considerations apply to the Bible. The Bible, Hobbes claims, is believed to be the word of God. But I could only know, in a way that leaves no room for reasonable doubt, that it is the word of God if God had personally revealed this fact to me. As long as this condition remains unfulfilled, I lack a rationale to consider the Bible’s moral or ceremonial precepts as binding law. Those to whom God has not personally revealed himself as the author of the Bible can therefore be obliged to consider the moral rules and the rules about worship contained in the Bible as binding law only if they are contained in the law of nature or if the sovereign, whose legal commands we are already obliged to obey, has chosen to incorporate them into his positive law.

A sovereign’s laws, Hobbes concludes, can never be known to conflict with positive divine laws, at least not as long as our alleged acquaintance with divine law rests or indirect revelation. A law the existence of which is not open to compelling and unambiguous public

Authority, but his, whose commands have already the force of Laws...’ Even Moses’ legislative authority was based on the consent of the people, not on an indubitable claim to prophecy (see ibid 324-5).

34 Ibid 49: ‘If Livy say the Gods made once a Cow speak, and we believe it not, wee distrust not God therein, but Livy. So that it is evident, that whatsoever we believe, upon no other reason, then what is drawn from authority of men onely, and their writings; whether they be sent from God or not, is Faith in men onely.’

35 See ibid 267-9.

36 The epistemic argument, admittedly, does not completely rule out the possibility of direct revelation that tells me to disobey my sovereign. But Hobbes can still hold that God would not publish a law that he expects others than the immediate recipient to obey in this way. Strauss’s claim that Hobbes’s critique of religion fails for not ruling out the possibility of private revelation misses this point. See Strauss (n 14) 334-8.
out the further promise of salvation, in the form of a future eternal life.\textsuperscript{39} The epistemic argument does not question a Christian’s belief in that promise. Hence, there is room, in Hobbes’s theory, to honour the existential significance of a revealed Christian faith or, for that matter, of any other revealed faith that accepts the epistemic argument.

Note as well that the attribution to Hobbes of the epistemic argument does not require us to take a stand on the hotly disputed question whether Hobbes was an atheist or a believer in (some kind of) Christianity.\textsuperscript{40} Christianity, for Hobbes, is a candidate for a true religion, but acceptance of the epistemic argument does not carry a commitment to the truth of Christianity. According to the epistemic argument, there can be no positive divine laws that are not already contained in the laws of the sovereign. The laws of nature, in turn, mandate unconditional obedience to sovereign law. It cannot, therefore, be an article of any faith that is a candidate for truth that our salvation depends on engaging in practices of worship that the sovereign has chosen to disallow or on refusing to participate in practices of worship that are publicly mandated. All practices of worship governed by such assumptions are superstitious, because the beliefs on which they are based must be false. We know that these beliefs must be false since they involve a manifestly unreasonable account of the nature of law according to which there can be valid laws whose existence cannot be verified by those to whom they allegedly apply.\textsuperscript{41} This line of reasoning claims that some forms of religion, those that can

\textsuperscript{39} See \textit{ibid} 404.


\textsuperscript{41} Hobbes (n 6) 256: ‘For though there be many things in Gods Word above Reason; that is to say, which cannot by naturall reason be either demonstrated, or confuted, yet there is nothing contrary to it... ’.
control. Hobbes at times comes close to identifying the practice of religion with obedience to the law of the sovereign and declares, consequently, that the state is the true church.\footnote{See ibid 320-2.}

From the point of view of a Hobbesian faith that accepts the conclusions of the epistemic argument, it does not really matter what outer religion or public worship one is expected to participate in, as long as one’s practice is accompanied by faith in Christ. Hobbes’s biblical exegesis goes so far as to claim that one can adhere to the true doctrine of the Christian religion, and attain salvation, as a law-abiding subject in a state committed to a false and idolatrous religion. According to Hobbes, Christian believers have license to go through the motions of observing an idolatrous religious practice, thus discharging their divinely sanctioned duty of obedience to the sovereign, without thereby endangering their salvation.\footnote{See ibid 343-4 and 414.} Hobbes’s political theology ultimately seems to culminate in a form of indifferentism with regard to religious practice, one that can hardly be acceptable for religious believers who take it that a certain form of visible religious practice is essential to their faith. Hobbes’s focus on inner faith appears to fail to accord proper significance to the free exercise of religion.

This objection is sound enough in principle, but it detracts from an important dimension of Hobbes’s political-theological approach. To get at the point, we need to note that Hobbes explicitly distinguishes between true and false religion. This distinction would be inexplicable from the point of view of a complete indifferentism with regard to external religious practice. It is therefore necessary to explain what we are to make of Hobbes’s distinction between true and false religion. In doing so, we will see that there is more to Hobbes’s political theology than has met our eye so far.
wrong, I hasten to add, not because the practices to which they gave rise had been outlawed, as though the sovereign was in a position to decide on the truth of religious belief, but rather because an understanding of the doctrine of Christianity that is liable to give rise to conflict with the laws of the sovereign cannot be a candidate for truth, for reasons made explicit in the epistemic argument.

More to our purpose, the epistemic argument also provides an explanation of what Hobbes understands by a false religion. A false religion is a system of religious practices that are publicly permitted (or even publicly mandated), and that is based on a doctrine which holds that there is a revealed divine law that enjoys supremacy over the positive laws of the state, and that consequently implies that the law of the state could come to conflict with divine law. The true religion (or more precisely: any religion that is a candidate for truth), by contrast, is a system of religious practices that are publicly permitted or mandated and that is based on a doctrine which endorses the epistemic argument, and that consequently denies the very possibility of a conflict between divine and secular law. It is a religion, in other words, that supports the idea of the supremacy of the law of the secular state.

The epistemic argument serves to explain why it would be advantageous for a political society to be committed to true religion rather than false, that is, why complete indifferentism about religion is to be rejected. Admittedly, a false religion may bolster the power of the state, on the condition that the state is recognized as acting in line with the supposed revealed higher law. But false religion, as we have already seen, is nevertheless inherently dangerous to the stability of the state because the state’s claim to be the sole representative and authoritative interpreter of the divine will is always in principle open to challenge. The only way to prevent religious challenges to the political authority of the state, then, is to convince religious believers of the conclusions of the epistemic argument or, in other words, to convince them to abandon false religion.
commonwealth essentially require.\textsuperscript{50} It follows that a state committed to true religion, in Hobbes's sense of the term, has no compelling reason to try to publicly enforce any particular system of religious rules of worship or moral conduct that goes beyond the laws that are necessary to achieve the state's secular purposes.

Finally, a state committed to a Hobbesian true religion, in contrast to a state committed to false religion, has a compelling reason to grant at least an inner freedom of conscience.\textsuperscript{51} In a state based on a false religion, the rulers must take themselves to be defenders of the belief in a revealed divine law that is inaccessible to reason and valid independently of sovereign enactment. Hence, a state based on false religion will likely take offence at the stance of those who are ready to obey its laws, but only for the secular reason that the laws in question have been enacted by a legitimate sovereign whose governance affords peace and security. A state based on false religion will therefore likely be distrustful of people's inner attitudes and refuse to limit itself to a concern with how they act. It will be prone to persecute its subjects simply for holding inner beliefs that they cannot help holding, even if these beliefs do not in any way dispose them to outer disobedience.

Such a policy would clearly be obnoxious to Hobbes. In \textit{Leviathan}, Hobbes repeatedly points out that we do not have volitional control over our beliefs, a theme that was


anyone to worship in accordance with religious rules that they reject. And finally, a state that is no longer committed to a false religion is a state that will be able to respect all forms of inner religious belief as long as they do not imply that there is a revealed divine law which may oblige us, on pain of losing salvation, to defy the laws of an otherwise legitimate sovereign in outer act. It will also be able to make room for those who, while they recognize a secularly grounded obligation to obey the state’s laws, have not been given the gift of faith.55

4. Hobbesian Tolerance and the Dialectic of Secularization

One might argue, admittedly, that Hobbes’s concessions to the religious believer are still much too modest to amount to true liberal tolerance. It is quite possible that some religious believers living in a Hobbesian state will hold beliefs that may come to require outer behaviour in violation of the secular laws of even a political community that is committed to true religion. A pre-modern Catholic, for instance, would have held that ultimate obedience to the pope, and religious practice in accordance with rules determined by the pope, not by the sovereign, is what is required for salvation. In a Hobbesian commonwealth, a Catholic could have enjoyed freedom of inner belief, but s/he would not necessarily have had the unrestricted freedom to exercise that religion, or to propagate it, and s/he might thus have

55 This may seem to conflict with Hobbes’s view that atheists are enemies of God to be excluded from the commonwealth. See Hobbes (n 50) 163-4; Thomas Hobbes, Leviathan, with selected variants from the Latin edition of 1668, ed Edwin Curley (Hackett 1994) 528-30. In these passages, Hobbes understands atheism as the denial of the existence of a provident and omnipotent God who is the author of the laws of nature. Since Hobbes appears to argue that the existence such a deity is accessible to natural reason (see Hobbes (n 6) 77 and 245-8), he would seem to allow for the possibility that someone might fail to have faith in any particular revealed religion and yet not be an atheist. Consequently, Hobbes argues that all those who do not publicly deny the existence of God should not be accused of atheism. See Hobbes, Leviathan, ed. Curley, 528-9.
subjects to worship in accordance with religious rules that some of them reject or when a sovereign fails to impose a ritual and moral conformity, by the use of the law, that some of his subjects perceive to be required by their interest in salvation.

Hobbes’s conception of true religion has the resources to resolve the first of these causes of sedition, as we have already seen. A state committed to true religion has no reason to impose contested rules of religious worship on dissenters. A state’s commitment to what Hobbes considers as true religion also opens a way to address the second pretext for sedition. If religious communities acknowledge that the rules of their religion lack the force of law, it is hard to see why a Hobbesian state should be concerned with how voluntary congregations of believers who do not claim to have license to disobey the laws of the sovereign on religious grounds, and who do not expect the state to favour or to enforce their religion, worship in private. Once the members of a society have come to adopt forms of religious belief that do not conflict with the conclusions of the epistemic argument, there is little reason, it seems, why a Hobbesian state should refuse to permit people to worship as they please in the privacy of their own church (or synagogue, mosque, etc.) and to choose to observe whatever rules of conduct they take to be imposed by their own religion.58

58 Admittedly, there are textual stumbling blocks for this interpretation, in particular Hobbes’s insistence on a uniform practice of public worship. See for instance Hobbes (p 6) 252-3: ‘... seeing a Common-wealth is but one Person, it ought also to exhibite to God but one Worship; which then it doth, when it commandeth it to be exhibited by Private men, Publicly. And this is Publicque Worship; the property whereof, is to be Uniforme... where many sorts of Worship be allowed, proceeding from the different Religions of Private men, it cannot be said that there is any Publicque Worship, nor that the Commonwealth is of any religion at all.’ Some recent discussions take this passage to imply that Hobbes advised a sovereign to adopt one or another arbitrarily-chosen form of sectarian worship as the state’s established or public religion, one that relegates all other forms of religious worship to an inferior position. See Jeremy Waldron, ‘Hobbes on Public Worship’ in Melissa S Williams and Jeremy Waldron (eds) Nomos XLVIII: Toleration and its Limits (New York University Press 2008)
Hobbes’s epistemic argument, to put the point differently, must be ‘taken up’ in the self-understanding of religious groups if the secular and liberal state is to be sustainable.

5. The Political-Theological Presuppositions of the Liberal State

Let us now see whether we can employ the conception of Hobbesian tolerance just outlined to delineate the political-theological presuppositions of the secular state. The attempt to do so will take account of a complication that has so far gone undiscussed. The presentation of the dialectic of secularization in the previous sections suggests that there are two different forms of the problem of dual obedience, an individualist and a collectivist one. Recall that Hobbes is compelled to address the problem of dual obedience in order to defend the principle of absolute sovereignty, which he takes to be indispensable for the achievement of social peace. To defend absolute sovereignty, it is necessary to eliminate the possibility of conflict between the demands of God and the demands of man. The process of Hobbesian secularization, as we have just seen, aims to achieve this goal with a two-pronged strategy: The state refrains from prescribing through law a particular form of religious worship, while religious communities accept that the rules of their religious practice lack the status of law. The residual problem that we now face is that some religious groups – groups that we, as liberals, believe ought to be accommodated by the state – may refuse to admit that their rules are altogether devoid of legal quality.

Hobbes’s characterization of what is involved in a rule’s having the status of law, however, is somewhat ambiguous. On the one hand, Hobbes frequently characterizes laws as categorical commands of legitimate authority that bind or oblige us through their pre-emptive force. Whenever I am given a valid command by a legitimate authority, I am no longer free to decide for myself how to act. Rather, I am committed to executing the authority’s command.
have a dual nature, as both authoritative and public, we are thus left with only two options for conceiving of the relation of political and religious order: One option is for the state to be committed to some religious doctrine or another, and to accept responsibility for enforcing the purported laws of that religion. The only other option, and thus the only alternative to implicit or explicit theocracy, is to deny the existence of religious law as a separate category of law, one that might come to challenge the supremacy of the state’s positive law. This is what the epistemic argument, in effect, sets out to do. As we have seen, that argument implies that a purported divine command can acquire legal force only by incorporation into the state’s law.

I argued above that Hobbes’s choice for the second of these two options is less illiberal than is often supposed. It is compatible with respect for an inner freedom of religious conscience as well as with a limited right to the free exercise of religion. Religious groups, in the scheme of Hobbesian tolerance, may be granted a right to free exercise on the condition that they acknowledge that the moral and ritual rules of their religion lack legal force, i.e. that they lack authoritativeness – at least in cases of conflict with secular law – as well as publicity. But this acknowledgment, needless to say, may not be forthcoming from some religious groups. At least in some cases, moreover, we will be inclined to sympathize with that refusal.\(^{63}\) Hobbes response to this residual problem was unabashedly illiberal: He argued that religious groups that do not acknowledge that their religious rules lack legal force must not be tolerated by a secular state.\(^{64}\) In Hobbes’s view, it is essential for the state to wield

\(^{63}\) For instance in the case of religiously motivated conscientious objection to military service. See Ernst-Wolfgang Böckenförde, ‘Das Grundrecht der Gewissensfreiheit’ in Ernst-Wolfgang Böckenförde, Staat, Verfassung, Demokratie. Studien zur Verfassungstheorie und zum Verfassungsrecht (Suhrkamp 1991) 200-63, 246-57.

\(^{64}\) See Hobbes (n 6) 223-4.
On the one hand, there are religious groups that are willing to acknowledge that their religious rules lack the nature of publicity, but that deny that those rules therefore also lack authoritativeness for religious believers. On the other hand, there are religious groups that continue to claim both authoritativeness and publicity for the rules of their religion. Members of a group of the first kind are liable to face an individualist version of the problem of dual obedience. They will not demand that the state impose their religious practice on others – perhaps because they acknowledge the truth of Hobbes’s claim that those who lack faith cannot be expected to regard the laws of the religion in question as authentic. But religious believers of this sort might nevertheless feel bound to follow the voice of their own conscience, as governed by what they hold to be divine law, in cases where obedience to secular law would force them to violate fundamental rules of their religion. By contrast, members of a religious group of the second kind, of one that upholds both the authoritativeness and the publicity of its rules, face a collectivist version of the problem of dual obedience. Such believers will not merely hold on to the view that divine law binds them individually, in cases of conflict with secular law, but also to the further claim that the community as a whole ought to be forced to submit the rules of their religion, and that it is the proper task of the state’s law to accomplish this end.

It is not difficult to see that the collectivist problem of dual obedience is much more dangerous to the process of secularization, and to the attainment of the secular purposes of the state, than the individualist version. Religious groups that accept the non-publicity of their own religious rules need have no problem to acknowledge the basic legitimacy of a secular, religiously neutral state and to co-exist with other religious groups under the umbrella of the state’s secular laws. Such groups will typically be most interested in not being forced to worship in a way they reject as inauthentic and they will want to secure the enjoyment of non-interference in their internal affairs. There is no very profound reason why the laws of a
publicity of those duties. For this to be the case, I have argued here, religious believers must be brought to see, on theological grounds, that true religion requires its adherents to accept that the state’s law has a monopoly on the characteristic of publicity.

This understanding of the political-theological presuppositions of stable secularization coheres with Böckenförde’s discussion of the proper stance of the Catholic Church towards the secular state.\(^6^9\) The recent history of the relationship of the Catholic Church to the secular state, as Böckenförde presents it, can be understood in terms of a doctrinal shift on the part of the church that abandoned the claim, however muted and implicit, to the publicity of the church’s law. In the spirit of Hobbes, Böckenförde aims to convince his readers that this shift is a shift to a superior expression of Christian religion.\(^7^0\) What is striking about his discussion, though, is that it seems to start out from the implicit assumption of the irreversible victory of the liberal and secular state. One gets the impression that Böckenförde’s central aim is to reconcile fellow Catholics to the fact that they will have to live in a secular state, and to encourage them to preserve their religion under secular political conditions. This, in Böckenförde’s view, is desirable not merely from the point of view of the church but also from the point of view of the secular state, for the reason that religious practice allegedly helps to compensate for a supposed deficit of Sittlichkeit that, or so Böckenförde seems to fear, might come to threaten the stability of a liberal state that refrains from enforcing morality and religion.\(^7^1\)

In light of our discussion of the political-theological problem in Hobbes, and arguably in the light of recent experience, this emphasis appears somewhat misplaced. Early modern

---

\(^6^9\) See Böckenförde (a 5).

\(^7^0\) For a comparable perspective in an Islamic context see Mustafa Akyol, \textit{Islam Without Extremes. A Muslim Case for Liberty} (W.W. Norton 2013).

\(^7^1\) See Böckenförde (a 1) 67-72.